IN THE HIGH COURT OF GUJARAT AT AHMEDABAD

APPEAL FROM ORDER No 16 of 1991

For Approval and Signature:

Hon'ble MR.JUSTICE J.R.VORA

==========

1. Whether Reporters of Local Papers may be allowed to see the judgements? : YES

2. To be referred to the Reporter or not? : NO

3. Whether Their Lordships wish to see the fair copy of the judgement? : NO

4. Whether this case involves a substantial question of law as to the interpretation of the Constitution of India, 1950 of any Order made thereunder? : NO

5. Whether it is to be circulated to the Civil Judge? : NO

KALYANJI KANJIBHAI

Versus

RAJABHAI DEVABHAI

Appearance:

MR YOGESH S LAKHANI for Petitioner

RULE SERVED for Respondent No. 1

MR JR NANAVATI for Respondent No. 2

CORAM : MR.JUSTICE J.R.VORA

Date of decision: 19/06/2001

ORAL JUDGEMENT

#. Heard learned advocate Mr.V.G.Dave for Mr.Yogesh Lakhani and learned advocate Mr.J.R.Nanavati, for respondent no.2. Respondent no.1 is served. This appeal is filed against an order passed by Civil Judge (S.D.) at

Rajkot below Ex.5 application in Special Civil Suit No.109/1987. The suit was filed by the present appellant against the respondents stating that on 14.2.1983 by an agreement defendant no.1 agreed to sell the suit house to the plaintiff within 60 days for Rs.1,10,000/- out of which Rs.11,000/- were paid on the day of the execution of the agreement. However the defendant nos.1 i.e. respondent no.1 had also agreed to sell said suit house by an agreement dated 15.4.1982 to defendant no.2 -respondent no.2. The agreement was oral one for which the defendant no.2 filed a Special Civil Suit No.48/1983 against respondent no.1, in which ad interim injunction was granted by the Court against respondent no.1 not to assign or transfer the suit property. We do not know the fate of the suit, most probably according to the submissions made, the same is pending.

#. However in Special Civil Suit No.109/87 which is subject matter of this appeal in an application Ex.5 it was urged that the defendant no.1 be restrained from selling, assigning, transferring the suit property at first instance on 24.4.1987 the trial Court was pleased to grant exparte ad interim injunction which was vacated by detailed order passed by the trial Court on 12.11.1990 which is subject matter of the present Appeal From Order.

#. The trial Court dismissed the application Ex.5 filed by the present appellant. The trial Court believed that the written agreement pleaded was not produced by the plaintiff and, that therefore, there was no prima faice case in favour of the plaintiff. At this stage, on submission made by both the parties I do not enter into the merits of the case, but having regard to the age of the litigation which is filed in the year 1987 the purpose of justice will be served if the trial Court is directed to expedite the main suit. In this view of the matter, the trial Court is directed as under:-

The learned Civil Judge (S.D.)at Rajkot is directed to expedite the hearing of Special Civil Suit No.109/1987 and finally decide the same within 3 months from the date of receipt of writ of this Court or producing the writ of order of this Court before the trial Court which ever is earlier. Office is directed to transmit the writ as expeditiously as possible to the trial Court.

With this order this appeal and Rule stand disposed of with no order as to costs.

(J. R. VORA, J.)

kks